In this case it is obvious that the defendant was operating on the material date, i.e. 7th January 1967, at its new office, No. 8, Road 213, Petaling Jaya, Selangor and not at the registered office at the Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur; and therefore when the writ was served on the defendant at its registered office in Lee Rubber Building, 3rd Floor, Jalan Bandar, Kuala Lumpur in accordance with Order 9 rule 8(1)(a) of the Rules of the Supreme Court, it had no knowledge whatsoever of the service of the writ.

The defendant came to be aware of the service of the writ and the judgment in default of appearance only when the applicant was notified by the garnishee that the judgment in default of appearance had been obtained against the defendant and garnishment proceedings had been issued and served on the garnishee.

In these circumstances I hold that the service of the writ on the defendant at its registered office on 7th January 1967 was not good service because in effect it did not give any notice at all to the defendant, contrary to the object of service of a writ as stated in the *Annual Practice* 1963, volume I — quoted above

I therefore allow the application to set aside the judgment in default of appearance and all subsequent proceedings against the defendant, with liberty on the part of the plaintiffs to reserve the writ on the defendant. Costs of this application are to be in the cause.

Application allowed.

Solicitors: *Skrine & Co.; Chung & Huang.*

SUBRAMANIA PILLAY v. SUNDARAMMAL; PR. KARUPPIAH — 3rd PARTY (No. 2)

[O.C.J. (MacIntyre J.) August 8, 1967]
[Ipoh — Civil Suit No. 38 of 1965]

Principal and Agent — Power of attorney — Agent purported to borrow under power given by principal — Whether excess of authority — Whether "upon any security real or personal" includes personal guarantee of donor.

The plaintiff claimed a sum of $11,300 and interest at an agreed rate lent to the duly constituted attorney of the defendant, which loan was contracted by the attorney when the defendant was not in the country. The defendant denied that the borrowing was with her knowledge or consent or that she received any part of it. She averred that the attorney acted in excess of the power given to him under a particular clause of the authority. The question turned on the meaning of the material words 'upon any security real or personal' — whether these words give the power to borrow on the personal gurantee of the donor.

Held: the general intention of the donor was to limit power to borrowing on the security of land or goods — "personal" should be interpreted to fit in with this intention. The power to borrow conferred by the relevant clause should be read to mean to borrow on security of real or personal property. Therefore, the attorney exceeded his authority in so borrowing and the claim must be dismissed.

Cases referred to:—

(1) *Bryant, Powis & Bryant Ltd.* v. *La Banque Du Peuple* [1893] A.C. 170, 177.

(2) *Singer* v. *Williams* [1921] 1 A.C. 41, 49.

(3) *Grimwade* v. *Mutual Society* (1885), 52 L.T.R. 409, 415.

CIVIL SUIT.

F. C. Arulanandom for the plaintiff.

P. P. Dharmananda for the defendant.

Cur. Adv. Vult.

MacIntyre J.: The plaintiff in this action claims a sum of $11,300 lent on the 30th day of January 1964 to one PR. Karuppiah as the duly constituted attorney of the defendant and interest thereon at the agreed rate up to date of judgment and thereafter at 6% per annum until satisfaction of the decretal amount.

It is admitted that the loan was contracted a week after the defendant had left on a visit to India and that she returned to this country on the 24th of August 1964. It is not disputed that at the material time the said Karuppiah was the duly constituted attorney of the defendant under a power of attorney bearing Ipoh Supreme Court Registration No. 611 of 1952.

The defendant however denies that the money was borrowed with her consent or knowledge or of receiving any part thereof and avers that even if her attorney did borrow the money she would not be liable as he had acted in excess of the power to borrow vested in him by virtue of the said power of attorney.

At the hearing both parties to the action agreed that there was only one issue to be resolved, namely, whether Karuppiah had acted in excess of the power to borrow vested in him by clause 12 of the power of attorney. Clause 12 reads as follows:—

"12. To charge any of my said lands and to borrow upon any security real or personal or by means of advances to be obtained on goods and merchandise and for that purpose to sign all necessary charges and other documents."

Mr. Dharmananda for the defendant contends that clause 12 empowers the attorney to borrow upon the security of the donor's property and had acted in excess of his power in contracting an unsecured loan. No authority bearing directly upon this point was cited but the case of *Bryant, Powis & Bryant Limited* v. *La Banque Du Peuple* (1) was cited as authority for the proposition that powers of attorney are to be construed strictly. In that appeal, Lord MacNaghten said:—

"That where an act purporting to be done under a power of attorney is challenged as being in excess of the

authority conferred by the power, it is necessary to shew that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication."

A number of authorities were cited to define the meaning of the word "securities". I shall refer to two only. In *Singer* v. *Williams* (2) Viscount Cave said:—

"My Lords, the normal meaning of the word 'securities' is not open to doubt. The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such as personal guarantee) are excluded."

In *Grimwade* v. *Mutual Society* (3) Chitty J. referred to "personal securities". He said:—

"The term personal security is now well understood. . . . . It includes every case where nothing more is obtained than the personal liability of the borrower, or of the borrower and sureties. It is the same thing as a loan on personal credit only."

Mr. Arulanandom, on the other hand, is of the opinion that the power to borrow vested by clause 12 is wide enough to include a loan contracted upon the personal guarantee of the donor. He contends that as the general powers conferred by the power of attorney in question are wide, clause 12 should also be construed as widely as possible. He further contends that the widest power to borrow which could be conferred on an attorney is to authorise him to borrow on the security of the donor's property and therefore the power to borrow without security would be implied in the power vested by clause 12.

I am unable to agree with this contention. I should rather think (although I am not deciding this point) that it would be more logical to infer from a general power to borrow that the attorney could pledge the donor's property than the reverse proposition. Besides, there would be a limit to the amount which could be borrowed on the security of property, whereas in case of personal guarantee, an attorney could pledge the credit of the donor far beyond his means to repay.

The question to decide in this case is whether the words "upon any security real or personal" in clause 12 would include borrowing on the personal guarantee of the donor. Now, quite apart from the word "personal" in clause 12, the whole tenor of the clause points to an intention on the part of the donor to limit the power to borrowing on the security of land or goods. Therefore, in my opinion, the word "personal" should be interpreted to fit in with the general intention of the donor.

It is manifestly clear that the power of attorney, which is a printed form, was drafted by a legal draftsman. "Real" and "Personal" are common law distinctions in regard to property, and therefore the power to borrow conferred by clause 12 must, in my opinion, be read to mean power to borrow on the security of real or personal property. I hold that Karuppiah in borrowing the money on a personal guarantee exceeded the authority conferred upon him.

The suit is therefore dismissed with costs.

Suit dismissed.

Solicitors: *Arulanandon & Co.; Dharmananda & Co.*

GRANT ADVERTISING INTERNATIONAL INC. & ANOR. v. GLAZE

[O.C.J. (Raja Azlan Shah J.) August 10, 1967]
[K.L. — Civil Suit No. 83 of 1966]

Practice and Procedure — Writ specially indorsed — Amendment — Application for, before date of trial — Introducing new cause of action and pleading fraud — Principle and practice on such amendment — Whether there can be a conversion from a specially indorsed writ to a generally indorsed writ — R.S.C., 1957, O. 3 r. 6.

This action commenced by specially indorsed writ being contested, was set down for trial. Before date for trial, plaintiffs applied for amendment of their pleadings. The amendment sought (a) an increase of the amount from the figure as originally claimed (b) to introduce a new cause of action in tort in addition to their original cause of action and fraud for the first time. The question to be answered was: whether there can be a conversion from a specially indorsed writ to a generally indorsed writ.

Held: (1) although the plaintiffs were seeking to introduce a new cause of action in tort in addition to their original cause of action, the new cause of action did not turn a suit of one character into a suit of another and inconsistent character. It merely added a new cause of action which concerned the same parties and which involved substantially the same facts and arose out of the same transaction *inter partes;*

(2) the plaintiffs must be allowed the conversion of the writ with the necessary indorsement.

Cases referred to:—

(1) *Looi Guan Kway* v. *Low Lean Bok* [1938] M.L.J. 35.

(2) *Kurtz* v. *Spence* [1887] 36 Ch. D. 770, 773.

(3) *Paxton* v. *Baird* [1893] 1 Q.B. 139.

CIVIL SUIT.

H. Elias for the plaintiffs.

Kok Wee Kiat for the defendant.

Raja Azlan Shah J.: On 27th January, 1966, the plaintiffs commenced an action against the defendant by way of specially indorsed writ for a liquidated sum of $33,362.89, particulars whereof are set out in the annexure thereto. The defendant on the other hand only admits owing them a sum of $5,763.30. The action was set down for hearing on 29th June, 1967. However, on 22nd May, 1967, the plaintiffs applied by summons in chambers which was subsequently adjourned to open court for amendment of their